

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

VALERO TERRESTRIAL CORPORATION, and
SOLID WASTE SERVICES, INC.,

Defendants

Civil Action No. _____

Judge _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("Administrator"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought against VALERO TERRESTRIAL CORPORATION d/b/a BROOKE COUNTY SANITARY LANDFILL and SOLID WASTE SERVICES, INC. d/b/a J.P. MASCARO & SONS ("Defendants") pursuant to Section 113(b) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b), for the assessment of civil penalties for violations of the New Source

Performance Standards (“NSPS”) of the Act, 42 U.S.C. § 7411, and Title V of the Act, 42 U.S.C. § 7661-7661f, at the Brooke County Sanitary Landfill (“the Facility”). The Facility is a municipal solid waste landfill and sewage sludge processing facility located on approximately 196 acres in Colliers, Brooke County, West Virginia.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because violations occurred in this District and the Facility is located in this District.

NOTICE

4. The United States has provided notice of commencement of this action to the State of West Virginia as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

PARTIES

5. Plaintiff is the United States of America, on behalf of the Administrator. The Attorney General is authorized to bring this action pursuant to Section 305(a) of the Act, 42 U.S.C. § 7605(a) and 28 U.S.C. §§ 516 and 519.

6. Defendant Valero is incorporated in the State of West Virginia.
7. Defendant Valero owns and operates the Facility.
8. Defendant SWS is incorporated in the Commonwealth of Pennsylvania.
9. Defendant SWS operates the Facility.
10. Defendants are persons within the meaning of Section 302(e) of the Act, 42

U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

11. The Clean Air Act was enacted to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

New Source Performance Standards

12. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator to publish a list of categories of stationary sources that cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. The Administrator has identified municipal solid waste landfills as one such category.

13. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each category. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of regulations or

proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as the New Source Performance Standards (“NSPS”).

14. Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated NSPS for municipal solid waste landfills at 40 C.F.R. Part 60, Subpart WWW, §§ 60.750-60.759. These standards are hereinafter referred to as the “Landfill NSPS.”

15. Also pursuant to Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated NSPS that apply to all categories of sources that are subject to specific NSPS. These standards are found at 40 C.F.R. Part 60, Subpart A §§ 60.1 - 60.19, and are hereinafter referred to as the “General NSPS.”

16. The Landfill NSPS apply to all municipal solid waste landfills that were constructed, reconstructed or modified on or after May 30, 1991. 40 C.F.R. § 60.750. “Municipal solid waste landfill” is defined as “an entire disposal facility in a contiguous geographical space where household waste is placed in or on land.” 40 C.F.R. § 60.751. “Modification” means “an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991.” 40 C.F.R. § 60.751. Modification occurs once construction of the vertical or horizontal expansion begins. *Id.*

17. Pursuant to the Landfill NSPS, the owner or operator of each regulated municipal solid waste landfill that has a design capacity of at least 2.5 million Megagrams (Mg) by mass and 2.5 million cubic meters by volume, and that calculates an emission rate of non-methane organic compounds (“NMOC”) of at least 50 Mg/year must submit a design plan for a landfill

gas collection and control system to the Administrator within one year of calculating the emission rate. 40 C.F.R. § 60.752(b)(2)(i). The collection and control system must meet the design requirements set forth at 40 C.F.R. § 60.752(b)(2)(ii). *Id.*

18. The owner or operator of each regulated municipal solid waste landfill with a design capacity above the specified amount must, within thirty months of submitting an emission rate report calculating NMOC emissions of 50 Mg or more, install a collection and control system that captures the gas generated (unless the owner or operator performs further sampling procedures specified in the regulations that demonstrate that the emission rate is less than 50 Mg/year) and complies with the regulatory specifications. 40 C.F.R. § 60.752(b)(2)(ii).

19. The owner or operator of each regulated municipal solid waste landfill that is required to design and install a landfill gas collection and control system in accordance with 40 C.F.R. § 60.752(b)(2)(ii) must route the collected gas to a control system that complies with the requirements set forth in 40 C.F.R. § 60.752(b)(2)(iii). 40 C.F.R. § 60.752(b)(2)(iii).

20. The owner or operator of each regulated municipal solid waste landfill that is required to design and install a landfill gas collection and control system in accordance with 40 C.F.R. § 60.752(b)(2)(ii) must operate the device to comply with the specifications set forth at 40 C.F.R. §§ 60.753, 60.755, and 60.756. 40 C.F.R. § 60.752(b)(2)(iv).

21. Pursuant to the General NSPS, the owner or operator of each “affected facility” – defined as “any apparatus to which a standard is applicable,” 40 C.F.R. § 60.2 – must conduct a performance test. 40 C.F.R. § 60.8. The performance test must take place within 60 days after the affected facility achieves its maximum production rate, but no later than 180 days after initial

startup. *Id.* A written report of the test results must be furnished to EPA. *Id.*

22. Section 111(e) of the Act, 42 U.S.C. § 7411(e), makes it unlawful for the owner or operator of a new source to operate such source in violation of any applicable standard of performance. Thus, a violation of the NSPS constitutes a violation of Section 111 of the Act.

Title V

23. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources that emit air pollutants. Title V does not impose new substantive requirements but allows States to issue operating permits setting emission limits and standards for individual sources in accordance with applicable requirements, including NSPS requirements. *See* 40 C.F.R. §§ 70.1(b), 70.6.

24. EPA granted interim approval to West Virginia's Title V operating permit program effective December 15, 1995, and final approval effective November 23, 2001. 40 C.F.R. Part 70, App. A. The regulations governing West Virginia's Title V operating permit program are set forth at W. Va. C.S.R. § 45 Series 30.

25. Regulated municipal solid waste landfills with a design capacity of at least 2.5 million Mg and 2.5 million cubic meters that commenced construction, modification or reconstruction on or after May 30, 1991, but before March 12, 1996, became subject to Title V permitting requirements as of June 10, 1996. 40 C.F.R. § 60.752(c)(1).

26. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and W. Va. C.S.R. § 45-30-3.1.a have at all relevant times made it unlawful for any person to violate any requirement of a permit

issued under Title V or to operate a regulated source except in compliance with a permit issued under Title V.

Enforcement Provisions

27. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to bring a civil action against any person who has violated certain requirements of the Act, including any requirement under the New Source Performance Standards or a permit issued under Title V of the Act.

28. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to commence a civil action for a penalty of not more than \$25,000.00 per day per violation against the owner or operator of an affected source whenever such person has violated certain requirements of the Act, including a requirement of the New Source Performance Standards or a permit issued under Title V of the Act.

29. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 note, and pursuant to the EPA's Civil Monetary Penalty Inflation Adjustment Rule, 69 *Fed. Reg.* 7,121 (Feb. 13, 2004), the maximum amount of the daily penalty shall increase from \$25,000.00 to

- a. \$27,500.00 for each violation occurring between January 31, 1997, and March 15, 2004; and
- b. \$32,500.00 for each violation occurring after March 15, 2004.

GENERAL ALLEGATIONS

30. The Facility is a “municipal solid waste landfill” within the meaning of 40 C.F.R. § 60.752.

31. Defendants are each an “owner or operator,” within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5) and 40 C.F.R. § 60.2.

32. Defendants undertook modification of the Facility after May 30, 1991. Therefore, the Facility is subject to the requirements of the General NSPS and the Landfill NSPS and is required to obtain and comply with a Title V operating permit.

33. An inspector from the United States Environmental Protection Agency (“EPA”) conducted an inspection of the Facility in April of 2003 and discovered violations of the Landfill NSPS, the General NSPS, and the Facility’s Title V operating permit.

FIRST CLAIM FOR RELIEF: NSPS Violations by Valero and SWS

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. On or about May 8, 1996, Defendant Valero submitted a Design Capacity Report indicating that the Facility has a design capacity greater than 2.5 million Mg by mass and 2.5 million cubic meters by volume. At the same time, Defendant Valero submitted an Initial NMOC Emission Rate Report indicating a calculated NMOC emission rate greater than 50 Mg per year.

36. Based on the information in the Design Capacity Report and the Initial NMOC Emission Rate Report, Defendants are required to comply with the standards set forth in 40

C.F.R. §§ 60.8, 60.752(b), 60.753, 60.756, 60.757, 60.758 and 60.759.

37. Defendants violated 40 C.F.R. § 60.752(b)(2)(ii) by failing to install by November 8, 1998, an active landfill gas collection system.

38. Defendants violated 40 C.F.R. § 60.752(b)(2)(iii) by failing to route collected gas to a control system that meets the regulatory specifications. Specifically, the open flare control device used in the passive system lacked a heating sensing device to detect the continuous presence of a flame, in violation of 40 C.F.R. §§ 60.756(c)(1) and 60.18. In addition, the flare lacked a device that detects flow to or bypass of the flare, in violation of 40 C.F.R. § 756(c)(2).

39. Defendants violated 40 C.F.R. § 60.752(b)(2)(iv) by failing to operate the collection and control system in compliance with the regulatory specifications. Specifically, Defendants failed to develop a surface monitoring plan as required by 40 C.F.R. § 60.753(d) and to perform surface monitoring as required by 40 C.F.R. §§ 60.753(d), 60.755(c), and 60.756(f).

40. Defendants violated 40 C.F.R. § 60.8 by failing to conduct a performance test of its collection and control system within 60 days after achieving the maximum production rate at which the Facility was operated but not later than 180 days after its initial startup. For purposes of 40 C.F.R. § 60.8, the Facility's collection and control system is an "affected facility" as defined at 40 C.F.R. § 60.2 because it is an apparatus to which the Landfill NSPS are applicable.

41. The violations set forth above subject Defendants to civil penalties of up to

- a. \$25,000.00 per day for each violation occurring before January 31, 1997;
- b. \$27,500.00 per day for each violation occurring between January 31, 1997, and March 15, 2004; and

- c. \$32,500.00 per day for each violation occurring after March 15, 2004.

SECOND CLAIM FOR RELIEF: Title V Operating Permit Violations by Valero

42. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

43. On October 23, 2002, the State of West Virginia issued a Title V operating permit ("Permit") for the Facility. The Permit was issued by the Division of Air Quality, West Virginia Department of Environmental Protection, to Defendant Valero as permittee.

44. The Permit established a number of general conditions and specific requirements for operation of the Facility. Among other things, the permittee was required to submit a design plan for a landfill gas collection and control system by December 6, 2002, and begin surface monitoring by April 15, 2002.

45. Defendant Valero violated the Permit by failing to submit a landfill gas collection and control design plan by December 6, 2002.

46. Defendant Valero violated the Permit by failing to begin performing surface monitoring by April 15, 2002.

47. The violations set forth above subject Defendant Valero to civil penalties of up to
- a. \$27,500.00 per day for each violation occurring between January 31, 1997, and March 15, 2004; and
 - b. \$32,500.00 per day for each violation occurring after March 15, 2004.

PRAYER FOR RELIEF

Wherefore, based upon all the allegations set forth above, the United States of America requests that this Court:

1. Assess a civil penalty against Defendants of up to \$25,000 per day for each violation of the Clean Air Act and the applicable regulations prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997, and March 15, 2004; and up to \$32,500 for each such violation after March 15, 2004; and
2. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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